

REMARKS

This Response is in reply to the Office Action mailed October 18, 2005. Claims 1-19 and 21-28 remain in the case. Claim 20 is canceled herein. Reconsideration based on the above amendments and the remarks below is kindly requested.

Formal Rejections

Claims 4 and 21 are rejected under 35 U.S.C. §112, second paragraph. Claims 1 and 4 have been amended to address and overcome this rejection.

Prior Art Comments

Applicant respectfully traverses the alleged prior art admission. The claims recite features of a ceramic metallic vessel. Applicant's claims and remarks are generally directed at patentably distinguishing the "higher level" unique and nonobvious features of the claimed ceramic and metallic vessel and not towards "lower level" distinctions. Applicant reserves the lower level distinctions for later discussion, if necessary and appropriate. In addition, the Examiner asserts that "a separate base member of metallic material is well known in the art." Applicant contends that this may be true in the plastic metallic vessel art, but is **not** true in the ceramic metallic vessel art.

Substantive Rejections

Claims 1-28 are rejected under 35 U.S.C. §103 as being unpatentable over Todd and Tung, in view of Hawn, Payson and Mitrovich.

Todd and Tung teach plastic metallic vessels. Applicant respectfully submits that there is no suggestion in Todd or Tung or the other references, individually or combined, to replace the plastic of Todd or Tung with ceramic. Applicant further submits that the "suggestion" is being provided by *hindsight*.

The Examiner states that the "suggestion" comes from a motivation to "save on material and manufacturing costs, reducing weight and simplifying the invention." Using ceramic instead of plastic requires more expensive raw materials, a more expensive manufacturing process,

creates a heavier product and adds complexity to manufacturing. Thus, **the cited art teaches away from the claimed invention.**

It is also stated that the "suggestion" comes from a motivation to improve "visual appearance." Applicant respectfully submits that this notion is arbitrary and insufficient. First, plastic offers visual appearance benefits not available in ceramic and vice versa, and this mutuality may render an aesthetic design choice arbitrary. Second, there is no teaching in the plastic references of how to make ceramic shells with sufficiently uniform manufacturing tolerances or how to create a reliable water and air tight seal between ceramic and metallic materials.

The Examiner also states on page 3, third full paragraph, that various metallic materials and various ceramic materials are known in the art and that it would have been "obvious to modify the materials based on the teachings of the characteristics of each material." While there are known relationships between the properties of various metallic materials and known relationships between the properties of various ceramic materials, this knowledge does not concern plastic materials which have properties that are significantly different from those of metal or ceramic (particularly from ceramic). Ceramic, for example, is brittle and non-elastic and readily chips and breaks, while plastic is elastic and pliable and compressible. Hence, mere knowledge of the properties of metal and ceramic (and plastic) does not disclose or suggest or otherwise render obvious the use of ceramic in place of plastic in the invention as claimed.

This is evidenced in part by the absence of mass-produced, food-safe double walled metal and ceramic vessels of any kind.

The inventor sought to address at least two problems in developing the present invention. The first problem is that ceramic vessels, e.g., coffee mugs and the like, have very poor thermal properties and loss heat rapidly. The inventor sought to create a double walled structure for a ceramic vessel and thereby make it "insulated." He sought materials and a design configuration to achieve this goal. **There is no mention in the cited art of this problem nor how to address it,** thus Applicant respectfully submits that the teachings of the cited art are insufficient to suggest creating an

insulated ceramic vessel with a metallic lining as recited in the claims.

The second problem addressed by the present invention is that ceramic is brittle and breaks easily. The inventor selected a material and shape that afforded not only desired thermal insulation, but also protection to the ceramic. The lip of the lining protects the top portion of the ceramic from chipping, the lining itself provides a "backbone" to the shell that enhances structural integrity, and the metallic base protects the base portion of the ceramic from chipping.

Regarding claims 4,13,17,22 and 27 which recite a separate metallic base, while bases are known in the field of plastic metallic double walled vessels, they are not known in the field of ceramic metallic double walled vessels. Since plastic has elastic, pliable properties that are not found in ceramic material, metal may be securely crimped on to plastic and with low risk of breakage (e.g., the metal can be crimped onto the plastic which, due to its elastic properties, can deform without breaking to form a tight seal).

Furthermore, since plastic can be made to higher manufacturing tolerances than ceramic, its use, as in Tung and Todd, actually teaches away from the use of ceramic because it teaches that a metallic base should be coupled to a material with higher uniformity (and elasticity).

Similarly with claim 28, Applicant submits that the fabrication of plastic material in a given shape and the formation of a seal between that shape and metal does not render obvious the fabrication of that shape in ceramic or the formation of a seal between ceramic and metal. This submission is based on the significantly different properties of plastic and ceramic as discussed above.

Comments on Claim Amendments

Claim 1 has been amended to address section 112 concerns and to recite that the opening is a "through" opening. Page 6, line 31, recites a "through hole," while Figs. 2-3 clearly illustrate an open bottom. This comment addresses the Examiner's rejection of Claim 26 as previously amended (the limitations of claim 26 as previously amended

are now found in claim 1) that asserted on page 4, second full paragraph, that the surface recess in Todd amounted to an opening.

Claim 15 has been amended to include the limitations of dependent claims 19 and 20. Claim 20 has been canceled.

Claim 26 has been amended to recite independent claim 1 with the limitations of dependent claims 2-6, 7-8 and 10-11. Claim 27 has been amended to recite the limitations of dependent claim 9.

Fildes Declaration

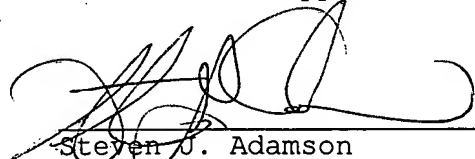
Applicant submits herewith a second declaration from Matt Fildes. This declaration address some of the questions raised by the Examiner regarding the first declaration and present other information evidencing the commercial success and nonobviousness of the present invention.

In view of the foregoing Amendments and these Remarks, Applicant respectfully submits that Claims 1-19 and 21-28 are now in condition for allowance and early notification of same is respectfully requested. Should the Examiner believe that a telephone conference would help further the prosecution of this case, the Examiner is requested to contact the undersigned at the listed telephone number.

The Assistant Commissioner is hereby authorized to charge underpayment of any fees (including any filing fees under 37 C.F.R. \$1.16 for additional claims and any patent application processing fees under 37 C.F.R. \$1.17 including any fee for extension of time) associated with this communication or credit any overpayment to Deposit Account No. 01-0272. A duplicate copy of this authorization is enclosed.

Respectfully Submitted
on behalf of Applicant,

Date: 2-21-06



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